

1 KEKER, VAN NEST & PETERS LLP
2 ELLIOT R. PETERS - # 158708
3 epeters@keker.com
4 AJAY S. KRISHNAN - # 222476
5 akrishnan@keker.com
6 BEVAN A. DOWD - # 308611
7 bdowd@keker.com
8 633 Battery Street
9 San Francisco, CA 94111-1809
10 Telephone: 415 391 5400
11 Facsimile: 415 397 7188

7 WANGER JONES HELSLEY PC
8 OLIVER W. WANGER - # 40331
9 owanger@wjhattorneys.com
10 PETER M. JONES - # 105811
11 pjones@wjhattorneys.com
12 265 E. River Park Circle, Suite 310
13 Fresno, CA 93720
14 Telephone: 559 233 4800
15 Facsimile: 559 233 9330

12 Attorneys for Dr. Yorai Benzeevi and
13 HealthCare Conglomerate Associates, LLC

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 IN AND FOR THE COUNTY OF TULARE, VISALIA DIVISION

16 In re SEARCH WARRANT 013487
17 EXECUTED AUGUST 22, 2018 AT
18 JPMORGAN CHASE BANK

19 YORAI BENZEEVI,

20 Moving Party,

21 v.

22 SUPERIOR COURT OF THE COUNTY
23 OF TULARE

24 Respondent,

25 TULARE COUNTY DISTRICT
26 ATTORNEY'S OFFICE,

Real Party in Interest.

Case No.

**REPLY OF DR. YORAI BENZEEVI IN
SUPPORT OF MOTION FOR RETURN
OF SEIZED PROPERTY AND RELATED
EVIDENTIARY HEARING**

Date: October 5, 2018
Time: 2:00 p.m.
Dept.: 13
Judge: Hon. John P. Bianco

27 **PUBLIC – Redacts Materials from Conditionally Sealed Record**
28

RECEIVED
TULARE COUNTY SUPERIOR COURT
ADMINISTRATION

OCT 03 2018

STEPHANIE CAMERON, CLERK

BY: LA

1 **I. INTRODUCTION**

2 The District Attorney (“the State”) has seized—without any legal or factual justification—
3 [REDACTED] of funds from a bank account belonging to Dr. Benzeevi. In response to
4 a straightforward motion that this unlawful seizure be unwound, the State have now made two
5 separate filings. The first filing offers a factual hearing, claims this is a civil proceeding, and
6 maintains that none of Dr. Benzeevi’s evidence can properly be considered. The second consists
7 of a sweeping factual diatribe untethered to a single sworn declaration or authenticated document
8 and advances legal assertions detached from authorities that are on point. The Court is left with a
9 [REDACTED] seizure bereft of legal basis or factual support.

10 In the County of Tulare, as in the rest of the State of California—and indeed throughout
11 these United States—Americans may not be deprived of their property absent due process of law.
12 People are presumed innocent, especially those who have never been charged with a crime. The
13 money seized from Dr. Benzeevi’s account consists of dollars from different sources. It is neither
14 contraband nor evidence of a crime. Its seizure prior to even the filing of a charge, much less the
15 demonstration of probable cause required to bring such a charge before a jury, has no basis under
16 California law. The motion for return of seized property must be granted, and the money must be
17 returned.

18 Dr. Benzeevi gladly accepts the State’s offer of an evidentiary hearing. He has rights in
19 his property and is due appropriate process before the State seizes it. But the deprivation of
20 [REDACTED] based solely on the near-hysterical arm-waving by a Deputy District
21 Attorney without any facts in support is not enough to protect those rights under any framework.
22 This Court should order the money returned immediately.

23 **II. ARGUMENT**

24 **A. There is currently no factual or legal basis to continue the seizure of Dr.**
25 **Benzeevi’s assets.**

26 The State’s failure to submit a single shred of admissible evidence compels the conclusion
27 that the seized funds must be released. Any search or seizure must be supported by probable
28 cause—which the State must establish. *Illinois v. Gates*, 462, U.S. 213, 238 (1983). At this

1 point, the State has established nothing. There is no legal authority that allows the State to seize
2 property based on a promise to prove the basis for the seizure at a later date. For this reason
3 alone, Dr. Benzeevi's motion should be granted.

4 Moreover, California does not allow a prosecutor to seize funds of an unindicted person
5 when those funds are neither proceeds of nor evidence regarding a crime. Cal. Penal Code
6 § 186.11(d)(1)&(2) authorizes the State to seize and freeze funds *only after* a criminal complaint
7 or indictment has been filed. The statute's silence about pre-indictment seizure makes clear that
8 the type of seizure the State is attempting here is outside statutory authority and violates Dr.
9 Benzeevi's rights.

10 **B. Even if the State's factual assertions are taken as true, there is no basis to**
11 **conclude that Dr. Benzeevi's current bank account contains Celtic loan**
12 **proceeds.**

13 While the seized bank account may have indirectly received proceeds from the Celtic loan
14 eleven months earlier, the account contained significantly more non-Celtic money. Moreover,
15 after the alleged Celtic loan proceeds were deposited into the account, considerably more money
16 was subsequently withdrawn from the account, rendering it impossible to conclude that any Celtic
17 money remained in at the time of the seizure. It is because of circumstances like this that
18 California law presumes that a search warrant is stale four weeks after an alleged crime. *See*
19 *People v. Cooks*, 141 Cal. App. 3d 224, 298 (1983).

20 Recognizing that it has no way to justify the seizure of Dr. Benzeevi's current funds, the
21 State resorts to inapposite money-laundering cases to argue that once tainted funds are deposited
22 into the account, the account is forever tainted. Unsurprisingly, the federal and state money-
23 laundering cases that the State cites—*United States v. Rutgard*, 116 F.3d 1270 (9th Cir. 1997) and
24 *People v. Mays*, 148 Cal. App. 4th 13 (2007)—never mention Penal Code § 1524, which is the
25 statute that authorizes the search warrant that issued here.¹ Nor has any California court ruled

26 ¹ Indeed, the State's cited cases actually refute its own argument. In *Rutgard*—which deals with
27 an unrelated “draconian” federal money laundering statute—the court expressly “decline[d] to
28 create” any presumption about whether “tainted” money is transferred first (or last) out of an
account that holds tainted and untainted funds. *Id.* at 1292–93. And *Mays* dealt with a situation
where “the defendant's entire business was illegal,” and therefore “all of the funds represented
criminally-derived funds”—a point that the State notably omits from its briefing. 148 Cal. App.
4th at 32.

1 that a money-laundering analysis is appropriate when analyzing whether assets are “stolen or
2 embezzled” pursuant to Penal Code § 1524.

3 Accordingly, the State has no legal basis to seize funds from an account that once held
4 stolen proceeds without actually proving that the account’s current balance consists only of stolen
5 funds.

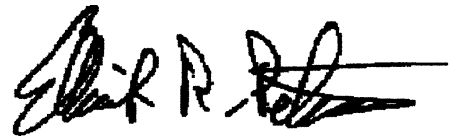
6 **III. CONCLUSION**

7 While Dr. Benzeevi is willing to participate in the evidentiary hearing that the State
8 requests,² his assets must be unfrozen in the meantime. In the United States, people may be
9 deprived of liberty and property only after due process has been satisfied; and at this time, there is
10 simply no basis to seize Dr. Benzeevi’s funds. Compounding the harm of this seizure is that Dr.
11 Benzeevi requires the frozen funds to defend himself against the State’s sprawling criminal
12 investigation—a clear violation of his Sixth Amendment right to counsel. Accordingly, Dr.
13 Benzeevi’s motion should be granted, and his funds should be released immediately.

14
15 Dated: October 3, 2018

KEKER, VAN NEST & PETERS LLP

16
17
18 By:


ELLIOT R. PETERS

19
20 Attorneys for Dr. Yorai Benzeevi and
HealthCare Conglomerate Associates, LLC

21
22
23
24 ² In the event that the Court holds an evidentiary hearing on whether a crime was committed, Dr.
25 Benzeevi will refute the State’s assertions at that time. Notably, the State appears to concede that
26 1) the MSA and Resolution 852 authorized HCCA to receive payment for its services and to enter
27 into loan transactions on behalf of the District and 2) the legality of any action rescinding
28 Resolution 852 prior to the execution of the Celtic loan was highly questionable and was in fact
questioned by multiple lawyers who were advising Dr. Benzeevi at the time. Accordingly, any
theory of criminality that the State puts forward will be highly suspect, as the State would not be
able to establish that Dr. Benzeevi had the necessary mental state to commit a crime under these
circumstances.